118

In the Houſe of LORDS.

Sir *John Eden*, Bart. *Robert Eden*, Eſquire, *Frederick Eden*, Son of the ſaid *Robert Eden* an Infant, by the ſaid *Robert Eden* his Father and next Friend, *Jonathan Daviſon* and *George Hartley*, Eſquires, ſtanding by Revivor in the Place of *Morton Daviſon*, Eſquire, lately deceaſed, } Appellants.

The Right Honourable *John* Earl of *Bute*, the Right Honourable *Henry* Lord *Ravenſworth*, and *Mary Bowes*, Widow, the Right Honourable *John* Earl of *Strathmore*, the Right Honourable *Mary Eleanor*, Counteſs of *Strathmore* his Wife, the Right Honourable *John Bowes*, commonly called Lord *Glamis*, an Infant, by the ſaid Earl of *Strathmore* his Guardian, - - } Reſpondents.

An Appendix to the Caſe of the Appellants,

On the Appeal preſented the 19th of *January*, 1774.

Petition preferred to the Chancellor for rectifying the Minutes.

THE Reſpondents not being ſatisfied with the Grounds upon which the Lord Chancellor made his Decree in their Favor, preferred their Petition to the Lord Chancellor on the 10th Day of *January*, 1774, ſtating, that his Lordſhip had made a Decree in their Favor; that they had ſeveral Proofs taken in the Cauſe, and ſeveral Exhibits to be read, which they found, by the Regiſter's Minutes, were not entered as read; and that there was no Direction given for entering the Proofs and Exhibits as read, which they were adviſed was very material to be done; and that they alſo found by the ſaid Minutes, that the Maſter was to approve of a Leaſe, purſuant to the Heads of Agreement in the Pleadings mentioned, with Covenants uſual in ſuch Leaſes; but the Petitioners apprehended, that the Directions ſhould have been, "That the Maſter do approve of a Leaſe purſuant to the ſaid Heads of Agreement," without any ſpecial Directions touching the Covenants to be contained in ſuch Leaſe, the Heads of Agreement having aſcertained the Covenants to be contained in ſuch Leaſe; and therefore praying, that the Minutes might be rectified in the Particulars therein mentioned: And all Parties concerned, being ordered to attend his Lordſhip on the Matter of the ſaid Petition, on the next Day of Petitions, and the ſaid *Morton Daviſon* having Notice thereof, did attend by his Counſel accordingly; and the ſaid Petition coming on to be heard on the 21ſt of *January*, 1774, his Lordſhip was pleaſed to order, that the Evidence on both Sides ſhould be entered as read; and further ordered, that that Part of the Minutes, which directs the Maſter "to approve of a Leaſe," purſuant to the ſaid Heads of Agreement, with Covenants uſual in ſuch Leaſes, be rectified and be as follows, "Let the Maſter approve of a Leaſe purſuant to the ſaid Heads of Agreement, with Covenants uſual or proper in ſuch Leaſes at the Time the ſaid Heads of Agreement bear Date."

Order made thereon.

The

Appeal preſented againſt that Order.

The ſaid *Morton Daviſon* conceiving himſelf to be aggrieved by ſo much of the ſaid laſt mentioned Order, as directs the Evidence on both Sides to be entered as read on the 25th Day of *January*, 1774, preſented his Appeal therefrom to your Lordſhips, and which Appeal, by an Order of this Houſe, dated the 1ſt of *March*, 1774, was revived in the Names of the now Appellants.

The Reſpondents having, purſuant to the Order of the 21ſt of *January*, 1774, entered all their Evidence in the Decree, as read on the Hearing, the Appellants, not waving the Grounds of their Appeal againſt that Order, did the like, leſt this Houſe ſhould confirm the Order of the Lord Chancellor, and the Appellants be precluded from making Uſe of their Evidence on the Hearing of their Appeal againſt the Decree, on Account of the ſame not appearing on the Face of it.

On the 21ſt of *April*, 1774, the Houſe ordered that both the ſaid Appeals ſhould be heard together.

The Caſe already ſtated is the Caſe upon which the Chancellor made his Decree; but the ſubſequent Order of the Lord Chancellor, for entering the Evidence on both Sides, and the Order of this Houſe of the 21ſt of *April*, 1774, make it neceſſary to obſerve upon the Evidence in the Cauſe which will be offered on the Part of the Reſpondents, in Support of the Conſtruction they would put on the written Agreement of the 21ſt of *April*, 1727, and to ſtate the Evidence in the Cauſe produced on the Part of the Appellants, in Anſwer thereto.

Firſt.

On the Part of the Reſpondents, it is inſiſted on as a Fact, that all the Collieries which the Partners, on the 17th of *April*, 1727, and at the executing ſaid Heads of Agreement of that Date, had or were poſſeſſed of, for which Liberty of Way-leave or Water-courſe through any of the Lands or Grounds of the ſaid *William Daviſon* was neceſſary, might have been wrought out in the ſeveral Seams of Coal then known and deemed capable of being wrought to Profit, in leſs Space of Time than Twenty Years, from the 17th of *April*, 1727.

Anſwer.

In Anſwer to which, the following Facts are proved by Witneſſes in the Cauſe:

That the *Hutton* and *Low Main* Coal-ſeams were diſcovered and known to be in all the Collieries the Partners had, long before the 17th of *April*, 1727; and that very little, if any, of the *Low Main* Coal-ſeam had been wrought in any of the ſaid Eſtates; and that the ſaid *Hutton* Seam was, before the 17th of *April*, 1727, capable of being wrought to Profit in each Year; that all or the greateſt Part of the ſaid *Hutton* Seam hath been ſince wrought out in the ſaid ſeveral Collieries, except in the *South-Eaſt* Part of *Tanfield Eaſter Leigh* and *Robinſon*'s *Shield Raw* Collieries; that Part of the *Shield Raw* hath been wrought in *Robinſon*'s *Shield Raw*; that there are four Seams below the main Coal-ſeam; that all the Coals in the ſaid ſeveral Collieries, in the Seams thereof known in 1727, and capable of being wrought to Profit, could not have been worked out in Twenty Years from that Time, unleſs the Reſpondents had taken an unuſual Method of collecting and employing a very extraordinary Number of Workmen; and that in Caſe, by ſuch Method, the ſame could have been wrought out in Twenty Years, the ſame could not have been vended in that Time, for that the ſaid ſeveral Eſtates did, in 1727, in the ſeveral merchantable Seams therein, contain about Three Millions Nine Hundred Thouſand *Newcaſtle* Chaldrons of Coals, which are equal to about Seven Millions Three Hundred and Twelve Thouſand Five Hundred *London* Chaldrons, which would have ſupplied the whole Vend of Coal in the River *Tyne* for Twenty Years; and that the Vend of Coal from the River *Tyne* was, for Twenty Years from 1727, equal to Two Thirds of the Coal vended by Water-Carriage from the *North* of *England*.

That many of the Seams of Coal in all the ſaid Collieries ſtill remain unwrought.

Second.

The Reſpondents inſiſt, that they, and thoſe under whom they claim, were reſpectively, from the making and executing the ſaid Heads of Agreement of the 17th of *April*, 1727, intitled to, and from Time to Time had and enjoyed, and ſo were meant and intended to have and enjoy, Liberty of Way-leave and Water-courſe, where neceſſary, in and through the Lands and Grounds of the ſaid *William Daviſon*, in the ſaid Heads of Agreement mentioned, for all ſuch Collieries as the ſaid Partners did or ſhould thereafter become poſſeſſed of, during Ninety-eight Years, as well as for the Collieries which they then had or were poſſeſſed of; and inſiſt that the Acts aforementioned

mentioned were, from Time to Time, done in Exertion of ſuch Right and Title, and were approved of by the late Appellant *Morton Daviſon*, or the ſaid *William Daviſon*, or their reſpective Agents or Viewers.

That, in 1737, the Leſſees mentioned in the Heads of Agreement of the 17th of *April*, 1727, by virtue thereof, did extend a certain Drift or Water-courſe made by them in the late Appellant's Lands at *Tanfield*, and a Waggon-way there, into a Parcel of Ground called *Parſon*'s Cloſe, belonging to the Miniſter of *Tanfield*, for the Purpoſe of winning, working, and leading Coals of the Colliery under the ſaid *Parſon*'s Cloſe; and, in 1739, the ſaid Leſſees did alſo extend the ſaid Drift or Water-courſe into *Dean*'s Cloſe, and thereby did win the Colliery within the ſame, and did work and lead the Coals of the ſaid Collieries reſpectively, by means of the ſaid Water-courſe and Waggon-way reſpectively, and without any Objection being then made by the then Owner of the ſaid Eſtate at *Tanfield*, or any of his Agents.

That the ſaid Collieries in *Parſon*'s Cloſe and *Dean*'s Cloſe, reſpectively did not belong to them till long after the Execution of the Heads of Agreement of the 17th of *April*, 1727.

That, in 1760, the Leſſees, by means of a Water-courſe laid on the *South* Side of *Beamiſh Burn*, through Part of the late Appellant's Eſtate, did begin to work *Dawſon*'s *Kiphill* Colliery, and ever ſince have wrought the ſame; that, in 1761, they led Coals from *Kiphill* Colliery down the Waggon-way laid over the Appellant's Eſtate, and, in 1762, they led Coals down the ſame Waggon-way from *Stanley* Colliery.

And that they did not become poſſeſſed of *Kiphill* Colliery till 1753, nor of *Stanley* till 1754.

Anſwer. *William Daviſon* the Father died *Auguſt* 27, 1734; — his Coal-mines in *Tanfield* were leaſed by him in 1723 to the Reſpondent for Twenty-one Years, in caſe he ſo long lived; — this Leaſe expired at his Death in 1734; — upon his Death the Waſte of the *Town-Street* of *Tanfield* deſcended to *William Daviſon* his Son, as Part of the Manor of *Beamiſh*; — the Lands and Collieries in *Tanfield* came by Settlement to the late Appellant, then Thirteen Years old, who attained his Age of Twenty-one in *May*, 1742.

The Leſſees became intitled to *Dean*'s Cloſe in 1727, to *Parſon*'s Cloſe in 1736. No Coals were led from *Dean*'s Cloſe over the late Appellant's Eſtate in the Life-time of Mr. *William Daviſon* the Father, all the Coals from *Dean*'s Cloſe and *Parſon*'s Cloſe were led between the Years 1737 and 1742, and the Coals wrought in thoſe two Cloſes were wrought by Drifts or Outſtrokes from a Pit in the Waſte of the *Town-Street* of *Tanfield*, and were led down the Ways laid over the Waſte of the *Town-Street* of *Tanfield* for *Daviſon's Tanfield* Colliery, that is, from his Lands on the *North* of *Tanfield*, over the *Town-Street*, to his Lands on the *South* Side of *Tanfield* Town; and the Coals from the ſaid Mr. *Daviſon's Tanfield* Colliery, and from *Parſon*'s Cloſe, were led down the ſame Waggon-way, and which was uſed to lead ſuch Coals in common with the ſame Waggons, at the ſame Time, from the other Collieries.

The Way from *Parſon*'s Cloſe to the Way laid over the *Town-Street* of *Tanfield* for *Daviſon's Tanfield* Colliery did not exceed Fifty Yards in Length.

And, as a full Anſwer, the Appellants inſiſt, That all the Acts done in the Collieries in *Dean*'s Cloſe and *Parſon*'s Cloſe, were done after 1734, when *William Daviſon* the Father died, and in the Life-time of *William Daviſon* the Son, who was Tenant in Tail of the Waſte of the *Town-Street* of *Tanfield* under his Father's Will, and before the 29th of *May*, 1742, when the late Appellant *Morton Daviſon* attained his Age of Twenty-one, and having been done during his Minority, did not bind him.

And the Appellants further inſiſt, That in Caſe the late Appellant *Morton Daviſon* had been under no Diſability, it would have been impoſſible for him to have ſtopped the Reſpondents from leading Coals from *Dean*'s Cloſe and *Parſon*'s Cloſe along the Waggon-way they were led upon ſo long, as the Waſte of the *Town-Street* of *Tanfield* was the Property of *William Daviſon* his late Brother.

It is admitted, That the Reſpondents were not poſſeſſed of *Kiphill* Colliery till 1753; nor of *Stanley* Colliery till 1754; that in 1761, Coals were firſt led from *Kiphill* Colliery down the Waggon-way laid over *Beamiſh South* Moor; and that they firſt began to lead Coals down the ſaid Waggon-way from *Stanley* Colliery in 1762.

The Waggon-ways over *Beamiſh South* Moor were laid by virtue of the Leaſe of the 1ſt of *January*, 1723, for leading of Coals from *Beamiſh South Moor* Colliery. The late Appellant *Morton Daviſon* could not break up that Way ſo long as the Leaſe ſubſiſted: They had a Right to lay it, and uſe it for *South* Moor; he could not ſtop the Waggons, as it was impoſſible to know whether the Coals came from *South Moor* or *Kiphill* or *Stanley* Colliery; nor could he ſtop one Waggon without ſtopping all; in ſhort, during the Leaſe of 1723, they led Coals from all theſe Collieries; but when that Leaſe expired, in 1764, they were diſcharged from leading Coals from *Kiphill* or *Stanley*, and a Treaty of Accommodation ſubſiſted from thence till *Trinity* Term, 1766, when the Bill was filed.

Third. The Reſpondents, as a further Reaſon to extend the Heads of Agreement of the 17th of *April* 1727, to all their future Collieries, ſay, that the Water-courſe *South* of *Beamiſh Burn*, through *South Moor*, was begun in 1744, and was made as well by virtue of *Beamiſh South Moor* Colliery Leaſe of 1723, as of the Heads of Agreement of the 17th of *April*, 1727, and was made to win *South Moor*, and ſuch Part of *Shield Raw* as was capable of being won by it, and ſuch other Collieries as they might have or be poſſeſſed of at any Time during the Term of Ninety-eight Years, mentioned in the Heads of Agreement of 1727.

Anſwer. It is before mentioned, that the Reſpondents were not poſſeſſed of *Kiphill* till 1753, nor of *Stanley* till 1754, ſo that it is plain the Water-courſe was not begun with a View to thoſe Collieries; it is true that *Blakeſton*'s *Shield Raw* was purchaſed in 1734, but the Water-courſe could not be intended for this, as it is not more than Two Years ſince they begun the Drift from a certain Pit called *Prince Pit*, on *South Moor*, to extend it to this Colliery.

The Facts ſhew, that this Water-courſe was not made to win *South Moor* only, for it was begun and carried as a Water-courſe into *South Moor*, and the ſeveral Pits there were worked by it, and could not have been worked without it; and they admit they won Three Seams by it in *South Moor*, and began to lead the Coals ſo won in 1754, and continued to the End of their Leaſe.

Fourth. And for the like Reaſons the Reſpondents alſo inſiſt, that the Rent, reſerved by the Heads of Agreement in 1727, is a reaſonable Rent for the Liberties they contend for.

Anſwer. The Rents reſerved were moderate, admitting the Heads of Agreement in 1727 were confined to the Collieries they then had.

The only certain Rent reſerved by the Heads of Agreement in 1727 was 100 *l. per Annum* for the firſt Twenty Years, for the Liberties of Way-leave and Water-courſe through *Tanfield* and *South Cauſey*; the other Rents were contingent.

In 1731, the Leſſees laid the Waggon-way over *Daviſon*'s *Tanfield*, for the Uſe of that Colliery.

In 1734, they extended the ſame into *Tanfield Eaſter Leigh*, and uſed it for that Colliery.

It is in Proof, that the Uſe of this Way was worth to the Leſſees 100 *l. per Annum*.

In 1737, the Leſſees laid a Waggon-way over the Weſt-ſide of *South Cauſey*, and uſed it till 1746, to lead their Coals from *Robinſon*'s *Shield Raw* and *Lancheſter*'s *Fell* Collieries.

It is alſo in Proof, that the Reſpondents had an Advantage of 1500 *l.* and upwards, upon every 1500 Tens of Coals, or 26,250 *Newcaſtle* Chaldrons of Coals, by having a Way through *Tanfield* Eſtate for *Tanfield Eaſter Leigh* Colliery, and through *South Cauſey* for *Robinſon*'s *Shield Raw* Colliery, greater than by any Way which could have been made over *Tanfield* Moor.

That

That the Coals worked in *Tanfield Eaſter Leigh* were won Forty Years ago, by extending the late Appellant's Water-courſe from *Daviſon's Tanfield* into *Tanfield Eaſter Leigh*, and could not otherwiſe have been won without a Fire-Engine.

What is ſaid above reſpects the Liberty of Way-leave and Water-courſe in *Tanfield* and *South Cauſey* only, and plainly ſhews the Rent of 100*l.* reſerved, was a very moderate Rent for the Benefit the Leſſees had by it.

The Rent reſerved for Way-leave and Water-courſe through *Beamiſh* and *Pockerley* is a Pepper-corn for the firſt Ten Years.—This Agreement commenced from the 1ſt of *May*, 1728.

It is admitted, that the Reſpondents extended the Water-courſe belonging to the late Appellant into *Hedley* Moor in 1731, and into *Parkhead* in 1732.

This was done whilſt the Rent of a Pepper-corn was payable, being within the Ten Years, and before the additional Rent was paid under the Proviſo contained in the Agreement.

Hence the Reſpondents had the Benefit of this Water-courſe to work *Parkhead* Colliery and *Hedley Fell* or *Moor* Colliery, without any Rent paid for the Water-courſe, though it is in Proof, that theſe Collieries were incapable of being won or worked without this Water-courſe.

It is in Proof from many Witneſſes,

That a Grant to the Leſſees of the Liberties in the Heads of Agreement in 1727, if for the Collieries they then had only, was worth a certain Rent of more than 300*l.* a Year, and the Witneſſes who ſpeak to this Fact ſay, that, in their Judgment ſuch Rent was then moderate and reaſonable; and that, if they had been Owners in 1727, they would have required more, and if Leſſees, they would have given more.

It is likewiſe in Proof in the Cauſe, That the Rents paid for Liberties of Way-leave and Water-courſe are in Proportion to the Quantity of Coals won by the Means of the Water-courſe, or led along the Waggon-way; that is to ſay, a certain Rent for every Ten of Coals; and the Witneſſes examined in the Cauſe ſay, that it was impracticable for any Perſon to eſtimate or judge what would have been adequate, reaſonable, and juſt Satisfaction between the Parties, for the general and extenſive Grant contended for by the Reſpondents; for they ſay it was impoſſible to know what Collieries the Leſſees might thenafter become poſſeſſed of, and the Quantity of Coals which might have been wrought thereout, or to compute what Damage might happen to the Eſtate or Coal-mines of *William Daviſon* the Father, from bringing great Loads of Water from ſuch Collieries, to which Communications were then, have ſince been, and now are, capable of being extended.

What is above ſtated is ſufficient to ſhew, that the Rent reſerved by the Agreement in 1727 is a moderate Rent for the Collieries and Coal-mines the Leſſees were then intitled to; and what follows will demonſtrate the Loſs that will be ſuſtained by the Perſons ſtanding in Mr. *Daviſon's* Place, if the Reſpondents ſhould prevail in their Conſtruction of the Agreement.

It is admitted by the Reſpondents, in their Anſwer, that the Quantity of Coals led down the Waggon-way laid over the late Appellant's Grounds, from *Kiphill* Colliery, to the 7th of *June*, 1766, is Two Thouſand Five Hundred and Ninety-nine Tens and Twenty-one Waggons, and the Quantity of Coals led down the ſame Waggon-way from *Stanley* Colliery, to the 17th of *June*, 1766, is Four Thouſand Four Hundred and Fifty Tens and Four Waggons; that, ever ſince they have continued to lead Coals from the ſaid Collieries along the ſaid Waggon-way, and it is in Proof in the Cauſe, by many Witneſſes, that in the *Hutton* and *Low Main* Coal Seams of *Kiphill* Colliery there are Nineteen Thouſand Tens of Coals, or Six Hundred and Twenty-ſeven Thouſand *London* Chaldrons; and, in the *Hard* Coal Seam and *Braſs Thill* Seam, a great Quantity; all which Seams are capable of being wrought and worked by Water-courſes made or to be made in the Appellant's Lands in *Beamiſh*, on the *South* Side of *Beamiſh Burn*.

That

That 2 *s.* 6 *d. per* Ten, for the Liberty of uſing ſuch Water-courſe, and the like Sum for Way-leave, is a reaſonable Rent to be paid.

That the Communications made from *South Moor* into *Stanley* Colliery, in the *Hard* Coal Seam and *Braſs Thill* Seam, may in both Seams be extended into a Colliery called *Twizell* Colliery; and that thoſe Seams in the *North* and *Weſt* Parts of that Colliery would thereby be won and capable of being worked; and which, without ſuch Water-courſe, could not be worked but by a Fire Engine, or by a Water-courſe through *Twizell*, at the Expence of 500 *l.*

That the Water-courſe which, pending the Suit, hath been extended from *South Moor* into *Blackeſton*'s *Shield Raw* may be extended into other Collieries, which by no other Means, except by a Fire-Engine or at an immoderate Expence, are capable of being won and worked to the Profit of the Owner, *viz. Robinſon*'s *Shield Raw* Colliery, the *South* and *Eaſt* Parts of *Lancheſter Fell* Colliery, the *Pea* or *Path* Colliery, *Kyo* Colliery, *Kyo Laws* Colliery, *Harperley* Colliery, *Buſh Blades* Colliery, the *South* Part of *Tanfield Moor*, *Tanfield Weſter Leigh*, and the *South* Part of *Tanfield Eaſter Leigh* Colliery, which Collieries do lie contiguous, and contain at leaſt Twenty-ſeven Millions of *London* Chaldrons, which, at 1 *s. per* Ten, or Thirty-three *London* Chaldrons, (and which is the loweſt Tentale Rent known to be paid in the Country for Water-courſe) will amount to 41,400 *l.* and which, at 2 *s.* 6 *d. per* Ten, will amount to 103,500 *l.* without any Conſideration had for the Liberty of Way-leave over the Appellant's Lands, and which is equally neceſſary for leading Coals from many of theſe Collieries.

That 2 *s.* 6 *d. per* Ten is by no Means the Medium Price for the reſpective Liberties of Way-leave and Water-courſe.

That the Reſpondents pay 2 *s.* 6 *d. per* Ten to Lord *Carliſle*, and divers other Perſons, for Liberies of Water-courſe for the working of different Collieries.

And that the Perſons ſtanding in the Place of the late Appellant *Morton Daviſon* pay to divers Perſons for Way-leave to lead the Coals from *South Moor* to the River *Wear*, divers Rents, which are equal to 11 *s.* 7 *d. per* Ten for all the Coals led to the River *Wear*.

On the Part of the Appellants, as further Evidence that it was not the Intention of the Leſſees, that the Liberties granted by the Agreement in 1727 ſhould be extended to future Collieries, it is inſiſted, and which ſtands admitted by the Reſpondents in their Anſwer,

That in *June* 1726 the Grand Articles of Partnerſhip between the Reſpondents were formed, whereby the Perſons under whom they claim entered into a confederate Partnerſhip for Ninety-nine Years, not only for the Collieries which they held by three Leaſes from Mr. *Daviſon*, but for all the other Collieries, and Parts of Collieries, of or belonging to them, of great Extent and Value, in the County of *Durham*, and ſituate and lying above *Newcaſtle* Bridge (except as to particular Collieries therein named) in the Articles of Partnerſhip belonging to them, or ſome of them.

That the Heads of Agreement in 1727 import only ſuch Collieries as they then had, and contain no Words which can reſpect future Collieries, or Intereſt, which they then had not, and which would certainly have been inſerted if meant to extend to future Collieries; for that in the Partnerſhip Articles in 1726, which were made and executed before thoſe of 1727, and conſequently were not only under the Conſideration but in the Memory of the Parties, in every Part where the ſame reſpects future Intereſts, proper Words are uſed and inſerted to expreſs and aſcertain the ſame.

Ex. Gr. " It is agreed that they the ſaid Partners in Thirds ſhall, during the " ſaid Term of Ninety-nine Years, mutually grant Way-leaves, with Liberty of " making Waggon-ways each to the other upon and through all the Lands, " Waſtes, and Commons, that they, or any of them, now are, or hereafter ſhall " be, poſſeſſed of, or intereſted in, except as therein is excepted, and alſo Drifts, " Water-courſes, *&c.*"

In

In Anſwer to this, the Reſpondents in their Anſwer ſay,

It may be uſual in Agreements drawn up in Form, and intended to be the only Agreements for ſuch Liberties, to inſert ſuch ſpecial Words, where it is agreed or intended to extend the Liberties to other Collieries than ſuch as the Leſſees have at the Time of making thereof, but ſay it is alſo uſual in Agreements for ſuch Liberties to inſert the Words, " and for no other Collieries whatſoever" or other ſpecial Words to the like Effect, where it is agreed or intended to reſtrain the Liberties to ſuch Collieries only as the Leſſees have at the Time of making thereof.

The Appellants further inſiſt, That in caſe the Heads of Agreement in 1727, had been intended to have extended the Liberties to future Collieries, it was as neceſſary to make Uſe of proper Words to include ſuch future Intereſts or Collieries in Heads of Agreement as it would be in a formal Agreement.

And it is likewiſe in Proof in the Cauſe, that a General Grant of Way-leave and Water-courſe for all the Collieries the Party had, or might have, is a Thing unknown.

House of LORDS.

Sir JOHN EDEN, and others, Appellants.

JOHN Earl of BUTE, and others, - - - - - - } Respondents.

An APPENDIX to the CASE of the APPELLANTS, on their Appeal presented the 19th of *January*, 1774.